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FOI DIGEST

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Courts Lift Book, Movie Bans on 'Lady'

Obscenity, how to define it and keep it defined, has been much in the news this summer.

Postmaster General Summerfield's name has been in the headlines nearly as often as *Lady Chatterly's Lover*, banned as a book by Summerfield and as a movie by the New York movie censoring board.

The Supreme Court ruled the board's action unconstitutional since the complaint against the movie was not that it was "dirt for dirt's sake" but because of *Lady's* idea — i.e., that adultery might be pardonable under given circumstances. And that, said the court, was in contravention to the guarantee of the First Amendment. (Rep. Dowdy said the court had voided the 7th and 10th of the Ten Commandments.)

As for the book, a U.S. district judge could find nothing objectionable, called Summerfield's decision erroneous and contrary to law on the basis of previous decisions holding that it is not up to the postmaster general to determine whether or not a book is obscene.

The ban was continued until an appeal could be filed. The Postoffice Department sought to maintain the ban until the October opening of the appeals court. This request was turned down and the ban lifted by an appellate court judge.

Lady's publisher advertised the victory in the New York Times. *Lady* shortly topped all best seller lists.

Lady's success has prompted Sen. Olin D. Johnston to call for early hearings on his proposed constitutional amendment to let each state decide its own standards of "decency and morality" in such areas as book and movie censorship.

Payroll Hearings Set for Oct. 12

Hearings on the suit filed by Vance Trimble, Scripps-Howard reporter, to force publication of payroll records by the House of Representatives, is scheduled for October 12.

Trimble also brought suit seeking the same information from the Senate. A court ruled the judiciary had no power to force such action by the Senate. Shortly after the decision (6-26-59) the Senate voted to make public employee payrolls.

House payrolls, by custom, have been open for inspection on request.

SDX Protests Raytown (Mo.) Vote for Closed Meetings

Sigma Delta Chi, through FOI Committee chairman V. M. Newton, Jr., has protested action of the Raytown (Mo.) Board of Aldermen in voting unanimously to hold one executive meeting a month.

Major Leroy Cox is quoted as saying: "We will always have executive meetings as long as I am fooling with the operation of the city."

Reno's mayor has lifted the 12-days blackout of news from his office imposed out of the mayor's annoyance at a news story mentioning him as witness to a picket line.

The newsman covering the Seattle park board meetings has gotten the closed door because the chairman objected to his folksy, idiomatic reporting style.

Lawrence H. Fitzpatrick, managing editor of the Madison (Wis.) *State Journal*, scores "executive session" phraseology in UPI Reporter (9-17-59).

"Secret is a good word," he writes, "meaning 'kept private and concealed' and you'll agree too many meetings are just that."

"To hell with this 'executive session' and 'closed' business . . . if a meeting is 'closed' to reporters it is 'secret' in our book."

Post-Censorship in Ghana

A decree in Ghana now provides imprisonment up to 15 years for any person uttering a "false" statement about Ghana or its government "by word of mouth or in writing or by any other means." This post-censorship also applies to offenses "committed outside" Ghana as well as inside. So, a writer publishing anything abroad that Nkrumah's government considers "false" could be tried and sentenced in absentia.

'Right to Advertise' Law Passed in Ohio

Ohio has become the first state to pass a "right to advertise" statute. Now, in Ohio, any state regulatory board can suspend the license of a person convicted under an existing statute (*Printer's Ink*) prohibiting false or misleading advertising. Otherwise, no agency can limit the right to advertise.

Boards still hold the whiphand in some states. A Louisiana judge upheld the optometry board in that state (9-3-59) in dismissing the suit of a doctor who contended his ads did not violate the law regulating optometry advertising since no price, credit terms or agreements were mentioned.

West Virginia, where funeral home ad restrictions have been bitterly criticized, eases regulations October 1. Purchase of larger space will be allowed, but price advertising is still forbidden.

Speaking before the American Bar Association, Robert M. Feemster, AFA and Dow Jones Company, said that what the country needs is right to advertise laws in all the states. "I'm sure it would shock most Americans," he said in his address, "The Right of Public Utilities to Advertise," "to learn that the right of the utility industry — or any other industry — to inform the public is being questioned."

The American Institute of Certified Public Accountants has backed right of private companies to explain their position through advertising and to be allowed standard deductions in a letter to the House Ways and Means Committees urging study of tax deductibility of advertising costs.

Harper's magazine and the University of Pittsburgh *Law Review* have lately carried materials concerning ad taxes.

The Review article, based on the Baltimore ad tax decision, suggests three ways ad taxes might be imposed within constitutional limits: a general sales tax (which Alabama has lately accepted); a selective tax on the sale of advertising; and, a tax on the privilege of advertising.

Harper's in its July issue suggested a tax of from 10 to 15% on radio-TV earnings, the money so collected to be used for production of public service programs, an area *Harper's* finds neglected by radio-TV. Government would collect and spend the tax.

The Advertising Federation of America, concerned by the severe increase in anti-advertising legislation and proposals of tax controls, will establish an office in Washington this fall with the expectation of moving its central office there by September 1960.

APME Group Notes Growing Antagonism Toward Press

The Associated Press Managing Editors Association's Freedom of Information Committee reports that it has been, for the most part, a poor year for legislation aimed at increasing freedom of information.

Noting a growth in antagonism toward the press at various seats of government, the Committee found it strange that so many editors appear indifferent to a situation which is "eating away the foundation on which their job is built."

More than 30 state legislatures were concerned with some phase of the access to information problem, according to the Committee, but only in the states of Maine and Hawaii were clear-cut victories scored. (Oklahoma later joined the ranks of those states that have legislated the right to open meetings. An open records bill was already on the books. For latest access bill score, see box on page.)

Twenty-one additional state boards and commissions in California are now covered by the "Brown Act" provisions binding previously on some sixty odd governmental agencies.

A loophole in the original act allowing boards to go into executive sessions by claiming personnel discussion and then discuss other matters has been plugged by an amendment which prevents the executive session from any discussion except of personnel.

Another bill, now law in California, exempts reporters from having to pay "supervision fees" while inspecting public records.

The Pennsylvania Senate has amended the state's right-to-know statute to provide for public notice of governmental meetings. Measure passed without a dissenting vote. No difficulty expected in the House.

An opinion by a law firm has informed the chief of police, Enfield, Connecticut, that his refusal to give information over the telephone would in all likelihood be deemed in contravention of the 14th amendment—since it unfairly burdens out-of-town newsmen—and of Connecticut's right to know statute.

A ban by the Israeli government on publication of the information on immigration under threat of 15 years imprisonment has met with considerable opposition from the Israelites and some jokes from the people. Among these: "In June, the population grew by 15,000 of which 10,000 was by natural means and 5,000 by other means."

STATUS OF ACCESS LEGISLATION

August 11, 1959

States with open records, open meetings guarantees:

Alabama, California, Connecticut, Illinois, Idaho, Indiana, Louisiana, Massachusetts (both '58) Minnesota, North Dakota, Pennsylvania (both '58), Utah, Vermont, Washington
Hawaii (both '59), Maine (both '59), New Mexico (meetings '59), Oklahoma (meetings '59)
TOTAL.....18

States with open meetings guarantee only:

Arkansas, Delaware, Maryland, Ohio
TOTAL.....4

States with open records guarantee only:

Arizona, Florida, Georgia ('59), Kansas, Kentucky, Michigan, Mississippi, Montana, Nevada, North Carolina, Oregon, South Dakota, Tennessee, Wisconsin
TOTAL.....14

States with neither open records or open meetings guarantees:

Alaska, Colorado (both defeated '59), Texas (both defeated '59), Nebraska, Iowa, Missouri, South Carolina (both defeated '58), Virginia (both defeated '58), New York, Rhode Island, New Hampshire (both pend '59), New Jersey (both pend '59), West Virginia (both defeated '59), Wyoming (both defeated '59)
TOTAL.....14

Atlanta Judge in News Again — This Time for Fine on Newspapers

Judge Durwood T. Pye, Atlanta, in the news last November for barring photographers from the sidewalks and streets adjacent to his courthouse, was in the news once more late in June.

He ordered the *Atlanta Journal* and the *Atlanta Constitution* to pay a \$20,000 fine for printing articles in connection with the trial which contained material not brought out in court. The newspapers published the material during a second trial, after the first was declared a mistrial.

Judge Pye said the newspapers "contend that what they did they had a right to do. They must be taught to the contrary. It is for this court to administer such instruction."

The Atlanta papers have appealed Judge Pye's contempt citation.

USIA Prohibits Showing of Films

The U. S. Information Agency has prohibited the showing of 82 American films in 12 nations which are unable to convert their national currencies into dollars. Films not on the USIA black list can be shown in these nations and paid for by funds made available through USIA.

The USIA action is based on the Agency's contention that the 82 films show the U. S. in an unfavorable light.

Book Controls

The Massachusetts Obscene Literature Control Board recently commenced operations with few well wishers among the newspapers which have generally condemned its establishment. It has been called "superfluous" at best and at worst "a serious threat of the right of Massachusetts citizens to read what they want to read." Intimidation of booksellers is feared.

In Indianapolis the Retail Druggists Association has protested the manner in which law officers are handling a campaign against obscene magazines. Stores have been forced to close when single attendants on duty were taken in arrest. In St. Louis, a police morality squad seized books by James Joyce and Havelock Ellis along with questionable magazines.

Bookbanning by segregationists has centered on children's reading. "The Three Little Pigs" went under attack by a Miami segregationist when he discovered that only the black pig was not eaten by the wolf.

The Florida House has killed a bill passed earlier behind the Senate which would have excused candidates for all but state-wide elections from listing the sources of their campaign money.

Articles and Books

- Giardi, John. "The Book Burners and Sweet Sixteen: An Editorial." *Saturday Review*, June 27, 1959 (Vol. XLII, No. 26). p. 22 ff.
- "In matters of art, what is official is always inhuman." Giardi discusses obscenity and the Post Office banning of a U. of Chicago literary quarterly. Innocuous material which would not offend a 16-year-old girl should not be the guide. Obscenity legally based on three principles: total intent, the average sensual man, and "the slightest redeeming social importance." Impulse toward censorship arises from failure to understand the intent.
- Grigg, Joseph W. "Even the Old Sweats Play It by Ear at Geneva." *Overseas Press Bulletin*, July 25, 1959 (Vol. 13, No. 30). p. 4.
- The pattern for the "open" sessions has changed little, with full briefings on the formal speeches after each session. But the "secret" session briefings are skimpy and uninformative, requiring detailed knowledge of the issues, sources, and being able to construct a picture from a few words of "guidance."
- Jungen, Welles. "Baghdad's Communized Newspapers." *IPI Report*, June 1959 (Vol. 8, No. 2). p. 7.
- Baghdad's press "is more thoroughly and unabashedly communized than any other institution in Iraqi life today." Even the English-language paper must obey the censor.
- Harrington, Alan. "The Self-Deceivers." *Esquire*, September 1959 (Vol. LII, No. 3). pp. 59-63.
- The author of *Life in the Crystal Palace* provides insight into the arts of the truth arrangers. Suggests public relations men desist in effort to turn PR into a "profession" since its purpose is to tamper with truths rather than follow them.
- Hartman, Carl. "Reporting Hungary." *IPI Report*, May 1959 (Vol. 8, No. 1). p. 6.
- Though the Hungarian regime has imposed no overt censorship, its officials are quick to tell a reporter about stories they dislike and the threat of expulsion is always held over his head. Reporting has become continuously more difficult as all political trials were closed and the right to choose translators was taken away.
- Hollander, Lynn. "Youth Courts and the Press." *News Workshop*, June 1959 Vol. X, Nos. 3-4). p. 5 ff.
- Campanella case points up once again the great debate as to whether names of juvenile delinquents should be released.
- Mollenhoff, Clark R. "How 'Executive Privilege' Was Used to Hide Evidence of the 'Mess' in Laos Foreign Aid." *ASNE Bulletin*, May 1, 1959 (No. 420). pp. 13-14.
- The "mess" in foreign aid spending in Laos demonstrates how "executive privilege" has been used to hide evidence of corruption, profiteering and mismanagement of foreign aid funds, and has blocked the whole function of the General Accounting Office, the only real check on the operations of government agencies.
- Mollenhoff, Clark R. "Secrecy in Washington." *Atlantic*, July 1959 (Vol. 204, No. 1). pp. 54-59.
- Discusses the "mushrooming evil" of "executive privilege" and administration's reluctance to correct the situation voluntarily. Wide variety of "embarrassing activities" cloaked in secrecy. Basic question is: Can President or his dept. heads arbitrarily override a specific law of Congress requiring the production of records in all agencies.
- Oppenberg, Marvin. "Should a Reporter's News Source Be Protected?" *News Workshop*, June 1959 (Vol. X, Nos. 3-4). pp. 9-10.
- Torre case has opened door for far-ranging legal arguments, has given impetus to proposed legislation, and has stimulated debate on whether journalists should be granted immunity from revealing their sources of information.
- Reston, James. "From Muckraking to a 'Privileged Sanctuary.'" *News Workshop*, June 1959 (Vol. X, Nos. 3-4). pp. 3-4.
- Examines the press and finds it is not moving fast enough to keep pace with these complex times. Cites the responsibilities of newspapers and calls for hard, aggressive reporting. Asks where line lies between the right of the people to know and the freedom of the President to exercise his duties in the most effective way. (Text of an address in the Don R. Mellett Memorial Lectureship on May 1, University of Wisconsin.)
- Riesel, Victor, and Rogge, O. John. "Must Reporters Tell All?" *Controversy*, August 1959 (Vol. 1, No. 4). p. 8 ff.
- Presenting the "yes" side, Rogge says if an individual's liberty or status or reputation or property is at stake, confidential informants ought not to be allowed to assume the role of anonymous talebearers. He traces the history of confidential sourcery. Riesel argues that great exposures would never come without "newsmen slipping in quietly and leaving with crackling information," and that disclosure would weaken "the effectiveness of one of the principal tools a
- newsman uses in keeping the public informed."
- Wiggins, James Russell. "Secrecy Menacing Survival." *The Ohio Newspaper*, May-June 1959 (Vol. 40, No. 3). p. 1 ff.
- "Under a raging impulse to secrecy, rampant since shortly after the turn of the century, springing in part from military crisis, in part from sheer expansion of government, in part from changes in the functions of government, and in part from diminishing faith in the theories of the eighteenth century, our institutions have been changing." (Reprint of an April 30th lecture in the William Maxwell Memorial Series at Ohio State University.)

BOOKS

- Problems of Journalism: Proceedings of the American Society of Newspaper Editors*. Pitts, Alice Fox, ed. Washington, D. C.: American Society of Newspaper Editors, 1959. 214 pp.
- Herbert Brucker, chairman of the FoI Committee, surveys the FoI struggles, listing recent successes and failures (pp. 99-102). Canon 35 comment on pages 117-185.

Court Kills Comic Book Ban

The California Supreme Court has overturned a Los Angeles county statute banning crime comics on the grounds that the books would incite children to commit or attempt to commit crime.

Said the court: "The record in the present case fails to disclose a close, causal connection between the substantive evil — juvenile delinquency — and the circulation of crime books in general. The record fails to show . . . a clear and present danger that the circulation . . . will injure the character of persons under the age of 18 years and inculcate in them a preference for crime."

An ACLU newsletter (9-7-59) said it was the first time a state supreme court had rejected the widely held belief that there is a connection between reading of crime and commission of crime.

Whitney North Seymour, American Bar Association president and chairman of the National Book Committee, told the American Library Association that the freedom to read "is being tampered with" in too many American cities and towns.

"We should not imperil our heritage of free press," he said, "by shackling our freedom to read what we will because there are some who think themselves qualified to choose that which they think we can safely read."

Congress Wants Foreign Aid Information

Congressional complaints against withholding of information by the executive branch centered this summer on the expenditure of foreign aid money. As trouble mounted in Laos so did stories of misspending of aid money in that country.

In June Rep. Porter Hardy introduced an amendment to the '59 Mutual Security Act which provided that the International Cooperation Administration, spender of billions in foreign aid, could not withhold from Congress and its bookkeeper, the General Accounting Office, "Documents, papers, communications, ordinances, reviews, findings, recommendations, reports, and other material" relating to the operations and activities of ICA.

The Hardy Amendment did not become legislation. The compromise anti-secrecy provision, now law, shuts off economic assistance to any country within 35 days of Congressional request for expenditures there and ICA refusal to supply unless the President personally forbids disclosure.

Eisenhower's power, as the Executive, to keep his secrets has not been questioned. When he said he was using his own "conscience" in withholding material he thought would damage national security, Senator Thomas Hennings found "a certain amount of sense" in the President's position.

To Hennings, the trouble was that "very few . . . matters pertaining to use of the so-called executive privilege ever actually reach him for a decision.

"Under the attorney general's extreme interpretation of the doctrine, practically everyone in the executive branch can cite the executive privilege as authority to withhold information from Congress and in most cases never even get to the cabinet level for a decision, much less the President."

In signing the amended foreign aid bill, Eisenhower emphasized once again his belief in his right and that of his "associates" in the executive branch to withhold in the interests of security and political relations with other countries.

Unlike the attorney general, the Supreme Court has never considered the issue of executive privilege, though recently the court touched on it in ruling unconstitutional the government's loyalty and security programs' provision for dismissal of employees of private companies as security risks without affording them the rights of confrontation and cross examination. The court could find no executive or congressional authority for the provision, adding "nor do we decide whether the President has inherent authority."

Textbook censorship bills have been introduced before many state legislatures. None seems to have gotten beyond committee hearings. The Daughters of the American Revolution has released a list of condemned texts — on the score of tendency to internationalism — used in 28 states and the District of Columbia. The North Carolina Press Association has inspected texts used in that state and found them acceptable.

The Senate Judiciary Subcommittee on Administrative Practices and Procedure has commenced to take "a good hard look" at the Administrative Procedures Act (5 U.S.C. 1002) held by many, among them Senator Hennings, to be the single greatest bulwark of the executive privilege theory.

The act provides for publication of information, opinions, rules, orders, and public records and allows withholding "in the public interest" and where a matter relates "solely to the internal management of an agency." Opponents say the broad wording allows anyone of the million odd employees of the executive branch to withhold at will and whim.

Officials Not Liable to Libel in Line of Duty

In a 5-4 ruling, the U.S. Supreme Court has decided that government officials cannot be sued for libel based on something they said or did in what they considered to be the line of duty.

Chief Justice Warren, in dissent, said: "It will sanctify the powerful and silence debate."

Members of the President's Cabinet have enjoyed absolute immunity when speaking on matters under their control by law for sixty-five years.

Attorney General Rogers has urged officials to use restraint in their statements despite their apparent immunity, reminding them that there are other ways of dealing with irresponsible talk.

Koreans Deny Press Restrictions

The Korean Office of Public Information has told the Overseas Press Club's Freedom of Information Committee, critical over alleged restrictions on the Korean press, that only one newspaper charged with criminal libel is under suspension in Korea. The paper in question was closed down for violation of security restrictions and not because it was an opposition paper.

According to Seoul, there are more than 570 Korean papers, four-fifths of which are either opposed to the government or independent, and no interference has been made with their right to publish freely.

P.O. Dept. Pushes Obscene Book Controls

While several state supreme courts were busy this summer striking down obscenity statutes in light of recent U.S. Supreme Court decisions — Pennsylvania and Oregon among them — the drive to control obscene publications marched on with the Postoffice Department as the vanguard.

In May Norman R. Abrams, retired assistant postmaster general, went on appointment as special assistant to the postmaster general with the mission of traveling the country to rally local post offices and citizens in the fight against indecent literature.

Local postmasters have promised headquarters a closer check of what they admit to the mails. Many newspapers — in Miami, New York City, Detroit, St. Louis, and Los Angeles among other cities — have run series of features on the local obscenity scene.

The postmaster general reported 70,000 complaints by citizens in the first six months of 1959 as against 50,000 a year ago; and in his many speeches he urged more citizens to complain while promising that those who complained need not face the defendant.

Many bills to increase Postoffice Department powers are before Congress. One (by Rep. Poff, Va.) would provide for appointment of a judicial officer in the department to give final decision on all obscenity matters. (Limits of his powers are not known.) The House Postoffice subcommittee is considering a bill to extend from 20 to 45 days the period for which obscene mail may be impounded. It also would authorize the Postmaster General to issue an impounding order if he believes the public interest so requires.

Rep. Dowdy (Tex.) has introduced a bill providing for the destruction of equipment of printers of indecent literature in the District of Columbia.

The Justice and Postoffice departments are said to be preparing a model city ordinance for control of obscene literature entered for mailing.

Greatly aiding the Postoffice Department in its current cleanup campaign is recently enacted legislation allowing prosecution of literature at point of receipt not, as formerly, only at the office of entry which was often in the southern areas of New York and California where judges tended to have broader view of obscenity than postal officials.

A bill that would have removed newspapers from state sales tax exemption was defeated by the Michigan legislature. Alabama's new sales tax (3%) does not exempt print media.